

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Janine Zajac	Team: Team # 1	CCRB Case #: 200912302	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/23/2009 11:35 PM	Location of Incident: St. Albans Park, near the intersection of 113th Avenue and Marne Place	Precinct: 113	18 Mo. SOL 11/23/2010	EO SOL 11/23/2010	
Date/Time CV Reported Mon, 08/10/2009 9:51 AM	CV Reported At: CCRB	How CV Reported: Fax	Date/Time Received at CCRB Mon, 08/10/2009 9:51 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Burt Antoine	23618	939877	113 PCT
2. POM Michael Perullo	28281	937282	113 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Raven Bollingdavis	14041	938082	113 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Burt Antoine	Abuse: PO Burt Antoine stopped § 87(2)(b)	
B.POM Burt Antoine	Discourtesy: PO Burt Antoine spoke obscenely and/or rudely to § 87(2)(b)	
C.POM Michael Perullo	Discourtesy: PO Michael Perullo spoke obscenely and/or rudely to § 87(2)(b)	
D.POM Burt Antoine	Abuse: PO Burt Antoine frisked § 87(2)(b)	
E.POM Michael Perullo	Abuse: PO Michael Perullo frisked § 87(2)(b)	
F.POM Burt Antoine	Abuse: PO Burt Antoine searched § 87(2)(b)	
G.POM Michael Perullo	Abuse: PO Michael Perullo searched § 87(2)(b)	

### Synopsis

On August 10, 2009, § 87(2)(b) faxed his complaint to the CCRB. On May 23, 2009, § 87(2)(b) was sitting in St. Albans Park in Queens and smoking a cigarette when an unmarked police vehicle drove in to the park and parked nearby. Three officers, PO Burt Antoine, PO Michael Perullo, and PO Raven Bolling-Davis of the 113<sup>th</sup> Precinct, exited the car and approached him. PO Antoine stopped § 87(2)(b) (**allegation A**) and both PO Antoine and PO Perullo asked him if it was legal to “smoke fucking marijuana in Canada” (**allegations B and C**). PO Antoine and PO Perullo both frisked § 87(2)(b) (**allegation D and E**) and allegedly reached in to § 87(2)(b)'s pockets (**allegation F and G**). The officers then quickly got back in to their car and drove away.

As § 87(2)(b) is a resident of Canada, his complaint was not suitable for mediation. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

### Summary of Complaint

§ 87(2)(b) was interviewed over the phone on August 21, 2009. He is a § 87(2)(b) black male and he resides in Toronto, Ontario, Canada. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

At approximately 11:35 PM on May 23, 2009, § 87(2)(b) went for a walk. He was staying with relatives, whose name or address he did not wish to give, near St. Albans Park in Queens. § 87(2)(b) was walking alone for approximately fifteen minutes when he came to St. Albans Park and decided to enter it near the intersection of 113<sup>th</sup> Avenue and Marne Place. He did not stop and talk to anyone while he was walking. He was wearing a brown Nike track suit, white t-shirt, white hat, and white running shoes. § 87(2)(b) had a pen clipped to his shirt collar and had his wallet in his right rear pants pocket. He also had a roll of Halls cough drops, a metal cigarette case, and a lighter in his other pants pockets. He did not have anything in his jacket pockets. § 87(2)(b) entered the park and looked for a bench, and he sat on top of the back rest of a bench that was located under a street light. He lit a cigarette and sat for approximately eight to ten minutes and then got up to walk more. He was walking west near Linden Boulevard at this point, but he was still inside of the park.

After thirty to fifty seconds, he saw a light coming through the park and did not know what the light was. He then saw that it was a dark, unmarked vehicle, and it was coming from the direction of the intersection of 113<sup>th</sup> Avenue and Marne Place, which is where an entrance to the park is located. § 87(2)(b) later said that the car was silver. The car, the license plate number of which was § 87(2)(e), § 87(2)(f), § 87(2)(g), § 87(2)(h), § 87(2)(i), § 87(2)(j), § 87(2)(k), § 87(2)(l), § 87(2)(m), § 87(2)(n), § 87(2)(o), § 87(2)(p), § 87(2)(q), § 87(2)(r), § 87(2)(s), § 87(2)(t), § 87(2)(u), § 87(2)(v), § 87(2)(w), § 87(2)(x), § 87(2)(y), § 87(2)(z), § 87(2)(aa), § 87(2)(ab), § 87(2)(ac), § 87(2)(ad), § 87(2)(ae), § 87(2)(af), § 87(2)(ag), § 87(2)(ah), § 87(2)(ai), § 87(2)(aj), § 87(2)(ak), § 87(2)(al), § 87(2)(am), § 87(2)(an), § 87(2)(ao), § 87(2)(ap), § 87(2)(aq), § 87(2)(ar), § 87(2)(as), § 87(2)(at), § 87(2)(au), § 87(2)(av), § 87(2)(aw), § 87(2)(ax), § 87(2)(ay), § 87(2)(az), § 87(2)(ba), § 87(2)(bb), § 87(2)(bc), § 87(2)(bd), § 87(2)(be), § 87(2)(bf), § 87(2)(bg), § 87(2)(bh), § 87(2)(bi), § 87(2)(bj), § 87(2)(bk), § 87(2)(bl), § 87(2)(bm), § 87(2)(bn), § 87(2)(bo), § 87(2)(bp), § 87(2)(bq), § 87(2)(br), § 87(2)(bs), § 87(2)(bt), § 87(2)(bu), § 87(2)(bv), § 87(2)(bw), § 87(2)(bx), § 87(2)(by), § 87(2)(bz), § 87(2)(ca), § 87(2)(cb), § 87(2)(cc), § 87(2)(cd), § 87(2)(ce), § 87(2)(cf), § 87(2)(cg), § 87(2)(ch), § 87(2)(ci), § 87(2)(cj), § 87(2)(ck), § 87(2)(cl), § 87(2)(cm), § 87(2)(cn), § 87(2)(co), § 87(2)(cp), § 87(2)(cq), § 87(2)(cr), § 87(2)(cs), § 87(2)(ct), § 87(2)(cu), § 87(2)(cv), § 87(2)(cw), § 87(2)(cx), § 87(2)(cy), § 87(2)(cz), § 87(2)(da), § 87(2)(db), § 87(2)(dc), § 87(2)(dd), § 87(2)(de), § 87(2)(df), § 87(2)(dg), § 87(2)(dh), § 87(2)(di), § 87(2)(dj), § 87(2)(dk), § 87(2)(dl), § 87(2)(dm), § 87(2)(dn), § 87(2)(do), § 87(2)(dp), § 87(2)(dq), § 87(2)(dr), § 87(2)(ds), § 87(2)(dt), § 87(2)(du), § 87(2)(dv), § 87(2)(dw), § 87(2)(dx), § 87(2)(dy), § 87(2)(dz), § 87(2)(ea), § 87(2)(eb), § 87(2)(ec), § 87(2)(ed), § 87(2)(ee), § 87(2)(ef), § 87(2)(eg), § 87(2)(eh), § 87(2)(ei), § 87(2)(ej), § 87(2)(ek), § 87(2)(el), § 87(2)(em), § 87(2)(en), § 87(2)(eo), § 87(2)(ep), § 87(2)(eq), § 87(2)(er), § 87(2)(es), § 87(2)(et), § 87(2)(eu), § 87(2)(ev), § 87(2)(ew), § 87(2)(ex), § 87(2)(ey), § 87(2)(ez), 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§ 87(2)(wu), § 87(2)(wv), § 87(2)(ww), § 87(2)(wx), § 87(2)(wy), § 87(2)(wz), § 87(2)(xa), § 87(2)(xb), § 87(2)(xc), § 87(2)(xd), § 87(2)(xe), § 87(2)(xf), § 87(2)(xg), § 87(2)(xh), § 87(2)(xi), § 87(2)(xj), § 87(2)(xk), § 87(2)(xl), § 87(2)(xm), § 87(2)(xn), § 87(2)(xo), § 87(2)(xp), § 87(2)(xq), § 87(2)(xr), § 87(2)(xs), § 87(2)(xt), § 87(2)(xu), § 87(2)(xv), § 87(2)(xw), § 87(2)(xx), § 87(2)(xy), § 87(2)(xz), § 87(2)(ya), § 87(2)(yb), § 87(2)(yc), § 87(2)(yd), § 87(2)(ye), § 87(2)(yf), § 87(2)(yg), § 87(2)(yh), § 87(2)(yi), § 87(2)(yj), § 87(2)(yk), § 87(2)(yl), § 87(2)(ym), § 87(2)(yn), § 87(2)(yo), § 87(2)(yp), § 87(2)(yq), § 87(2)(yr), § 87(2)(ys), § 87(2)(yt), § 87(2)(yu), § 87(2)(yv), § 87(2)(yw), § 87(2)(yx), § 87(2)(yy), § 87(2)(yz), § 87(2)(za), § 87(2)(zb), § 87(2)(zc), § 87(2)(zd), § 87(2)(ze), § 87(2)(zf), § 87(2)(zg), § 87(2)(zh), § 87(2)(zi), § 87(2)(zj), § 87(2)(zk), § 87(2)(zl), § 87(2)(zm), § 87(2)(zn), § 87(2)(zo), § 87(2)(zp), § 87(2)(zq), § 87(2)(zr), § 87(2)(zs), § 87(2)(zt), § 87(2)(zu), § 87(2)(zv), § 87(2)(zw), § 87(2)(zx), § 87(2)(zy), § 87(2)(zz).

PO Antoine exited the car first, then PO Bolling-Davis, then PO Perullo. The officers rushed toward him right away. PO Antoine said, “What are you doing here? Don’t you know the park is closed?” § 87(2)(b)

tried to explain that he is not from the United States and that he was only in New York to bury his father. PO Antoine then asked, "Where's the fucking marijuana?" § 87(2)(b) said, "What are you talking about, marijuana?" PO Antoine asked, "Is it legal to smoke fucking marijuana in Canada?" PO Perullo said that he smelled marijuana and began to ask the same questions to § 87(2)(b) including "Where's the fucking marijuana?" and "Is it legal to smoke fucking marijuana in Canada?" Thirty seconds into the conversation, PO Bolling-Davis, who § 87(2)(b) described as a female, grabbed § 87(2)(b)'s hands and held them behind his back.

While PO Antoine and PO Perullo asked questions, they both frisked § 87(2)(b) on his chest, his waist, his groin, his legs, and his ankles. PO Antoine and PO Perullo both reached into § 87(2)(b)'s pants and jacket pockets. PO Antoine took § 87(2)(b)'s wallet out of his right back pants pocket without asking. The officers did not say anything to § 87(2)(b) while they searched his pockets, and they did not say what they were looking for. PO Bolling-Davis was still holding § 87(2)(b)'s hands at this point, but she did not speak during the incident. § 87(2)(b) could not see what PO Antoine was doing with his wallet because PO Antoine was behind him. § 87(2)(b) said, "I have \$300.00 in the wallet, so watch how you are dealing with it. If you are looking for ID you will see it." PO Perullo joined PO Antoine and they were conversing with each other approximately three feet behind § 87(2)(b). PO Antoine then said, "Here's your wallet," and then gave § 87(2)(b)'s wallet back to him.

The officers then ran back to their car and drove away. § 87(2)(b) thought that they may have received a call, but he did not hear a call and said that although the officers all had radios, their radios were off during the incident. § 87(2)(b) could not recall if the officers had radios on their shoulders or if they were handheld. They drove away quickly by exiting through the same entrance they came in. The interaction with the officers lasted approximately twelve to fifteen minutes.

### **Results of Investigation**

#### **PO Burt Antoine – memo book (encl. 7a-b)**

PO Antoine did not have any entries in his memo book pertaining to this incident.

#### **PO Burt Antoine – CCRB statement (encl. 8a-b)**

*PO Burt Antoine of the 113<sup>th</sup> Precinct was interviewed at the CCRB on September 29, 2009. He is a § 87(2)(b) year old black male who stands five feet and six inches tall. He has black hair, brown eyes, and weighs approximately one hundred and sixty-five pounds. On May 23, 2009, PO Antoine worked from 7:30 PM until 4:05 AM, and he was assigned to SNEU. He was working with PO Michael Perullo and PO Raven Bolling-Davis of the 113<sup>th</sup> Precinct. They were assigned to an unmarked silver Chevy Impala and they were dressed in plainclothes.*

At approximately 11:35 PM on May 23, 2009, PO Antoine, PO Perullo, and PO Bolling-Davis were working as a part of the 113<sup>th</sup> Precinct SNEU operation. PO Antoine, who was operating the vehicle, drove past St. Alban's park near the intersection of Sayres Avenue and Merrick Boulevard. PO Bolling-Davis, who was in the backseat, observed, with a pair of binoculars, § 87(2)(b) sitting on a bench inside of the park smoking a marijuana cigarette. PO Antoine said that all of the officers saw § 87(2)(b) smoking something in the shape of a cigarette, but he could not visually identify what it was that he was smoking. PO Bolling-Davis had the best visual on him because she had binoculars, and she confirmed that it was not a cigarette by saying so out loud while in the car. When she made this observation, their vehicle was approximately two hundred feet from where § 87(2)(b) was inside the park.

Ten to fifteen seconds after § 87(2)(b) was observed, they pulled into the park and when they were approximately fifty feet away, all three officers saw § 87(2)(b) throw the marijuana cigarette on to the nearby grass and begin to walk away going west. There was a concrete walkway nearby as well. The officers exited the car and said, "Police." PO Perullo and PO Bolling-Davis searched for the marijuana cigarette with a flashlight while PO Antoine spoke to § 87(2)(b). PO Antoine said that the area smelled like marijuana, which confirmed for him that § 87(2)(b) had been smoking marijuana and not a regular cigarette.

§ 87(2)(b)'s voice was loud when the officers first approached, but he calmed down a bit later. § 87(2)(b) told PO Antoine that he was visiting from Canada and was in New York to bury his father. PO Antoine asked § 87(2)(b) if it was legal to smoke marijuana in Canada and he said that he had not been smoking marijuana. § 87(2)(b) said, "This is bullshit." PO Antoine denied asking § 87(2)(b) if it was "legal to smoke fucking marijuana in Canada," but stated that he did say, "No, it's not bullshit, you can't smoke weed in the park," in response to § 87(2)(b). PO Antoine asked § 87(2)(b) for his ID, and § 87(2)(b) said that he did not have any.

PO Antoine frisked § 87(2)(b) from his waistband down and then from his waistband up. PO Antoine frisked him because it was dark in the park and he was alone with § 87(2)(b) while his partners looked for the marijuana cigarette, and because he was going to be arrested. PO Antoine did not find anything during the frisk. He did not reach in to § 87(2)(b)'s pockets at any point and did not retrieve his wallet from any of his pockets. The intention upon entering the park was to arrest § 87(2)(b) for being in the park after dark and for the marijuana.

PO Antoine did not recall the other officers having any verbal interactions with § 87(2)(b) during this incident, and neither of them had physical contact with § 87(2)(b). The entire interaction lasted for less than a minute. They did not have sufficient time to find the marijuana cigarette. There was nobody else present in the park during this incident.

The other car from the SNEU team called for assistance over the point-to-point radio because they were wrestling with someone that they were arresting approximately one block away. At that point PO Antoine, PO Perullo, and PO Bolling-Davis got back in to their car and responded to that call.

**PO Michael Perullo – memo book** (encl. 9a-b )

PO Perullo did not have any entries in his memo book pertaining to this incident.

**PO Michael Perullo – CCRB statement** (encl. 10a-b)

*PO Michael Perullo of the 113<sup>th</sup> Precinct was interviewed at the CCRB on October 15, 2009. He is a § 87(2)(b)-year-old white male who stands six feet and two inches tall. He has brown hair, brown eyes, and weighs approximately two hundred and thirty pounds. On May 23, 2009, PO Perullo worked from 5:30 PM until 4:05 AM and he was assigned to SNEU with PO Burt Antoine and PO Raven Bolling-Davis. They were dressed in plainclothes and were driving an unmarked silver Chevy Impala.*

§ 87(2)(g). PO Perullo said that the officers said, "Stop! Police!" while still in the car and that the officers exited the car after § 87(2)(b) stopped.

While searching for the marijuana cigarette, PO Perullo heard § 87(2)(b) continue to yell but did not hear what was said. PO Perullo added that § 87(2)(b)'s presence in the park was enough for him to be arrested, as he was in violation of the New York City law regarding parks closing either at dark or after 9:00 PM.

**PO Raven Bolling-Davis – memo book** (encl. 11a-b)

PO Bolling-Davis did not have any entries in her memo book regarding this incident.

**PO Raven Bolling-Davis – CCRB statement** (encl. 12a-b)

*PO Raven Bolling-Davis of the 113<sup>th</sup> Precinct was interviewed at the CCRB on October 15, 2009. She is a § 87(2)(b)-year-old black female who stands five feet tall. She has black hair, brown eyes, and weighs approximately one hundred and seventy pounds. On May 23, 2009, PO Bolling-Davis worked from 5:30 PM until 4:05 AM and she was assigned to SNEU with PO Burt Antoine and PO Michael Perullo. They were dressed in plainclothes and were driving an unmarked silver Chevy Impala.*

§ 87(2)(g). She said that she observed § 87(2)(b) for two to three minutes and saw a cloud of smoke and the glowing ember of the cigarette, and she mentioned to the other officers that he was smoking.

The officers pulled the car into the park through an entrance on Merrick Boulevard and told § 87(2)(b) to stop when he was a few feet away from the bench he had been sitting on, at which point all three officers exited the car.

#### **Other documents**

A **BADS printout** (encl. 13a) verifies that an arrest took place near the location of this incident within the same time frame. The printout shows that force was necessary to effect the arrest. The arresting officer was PO Pearl of the 113<sup>th</sup> Precinct, who was assigned to SNEU at the time.

#### **NYPD documents**

A copy of the **roll call** (encl. 13aa) shows that PO Antoine, PO Perullo, and PO Bolling-Davis were all working together and were assigned to vehicle #§ 87(2)(b) together. There were no other officers assigned to that car.

#### **§ 87(2)(b) CCRB and criminal conviction history** (encl. 3a)

This is § 87(2)(b)'s first complaint with the CCRB. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### **PO Burt Antoine and PO Michael Perullo CCRB histories** (encl. 1a, 2a)

In their respective three and four years with the NYPD, neither PO Antoine nor PO Perullo have had previously substantiated complaints against them.

### **Conclusions and Recommendations**

#### **Identification of subject officers**

§ 87(2)(b) saw PO Antoine's name on his shield during the incident and provided it in his initial written complaint. PO Antoine admitted to interacting with § 87(2)(b) and identified PO Perullo as being present for the incident as well. § 87(2)(g)

#### **Undisputed facts**

It is not disputed that PO Antoine stopped § 87(2)(b) and that § 87(2)(b) was subsequently frisked.

#### **Disputed facts**

§ 87(2)(g)

#### **Assessment of Evidence**

The officers entered the park on the suspicion that § 87(2)(b) was smoking marijuana and because he was in the park after dark. All of the officers interviewed stated that there was a strong odor of marijuana permeating the area once they exited their car, and prior to entering the park, PO Bolling-Davis had a clear view of § 87(2)(b) smoking what looked to be a marijuana cigarette. § 87(2)(g)

§ 87(2)(b) said that he was frisked and searched by both PO Antoine and PO Perullo. PO Antoine admitted to frisking § 87(2)(b) and stated that the frisk was conducted because it was dark in the park and he was alone with § 87(2)(b) while his partners looked for the marijuana cigarette, and also because he was going to be arrested. PO Antoine denied searching § 87(2)(b) and PO Perullo denied that he frisked or searched him. § 87(2)(g)

The BADS printout included in the case file verifies that other SNEU officers were effecting an arrest at approximately the same time that § 87(2)(b) was stopped. The printout shows that force was necessary to subdue the perpetrator, § 87(2)(g)

§ 87(2)(g)

Although § 87(2)(b) alleged that both PO Antoine and PO Perullo used discourteous language while interacting with him, the officers were consistent that they did not. The park was empty save for § 87(2)(b) and the officers, § 87(2)(g)

**Allegation A: PO Burt Antoine stopped** § 87(2)(b)

**Allegation D: PO Burt Antoine frisked** § 87(2)(b)

**Allegation E: PO Michael Perullo frisked** § 87(2)(b)

**Allegation F: PO Burt Antoine searched** § 87(2)(b)

**Allegation G: PO Michael Perullo searched** § 87(2)(b)

§ 87(2)(g)

As explained in the **Street Encounters Legal Issues memo book insert** (encl. 1aa), when officers have probable cause for an arrest, they have the authority to frisk and search.

§ 87(2)(g)

**Allegation B: PO Burt Antoine spoke obscenely and/or rudely to** § 87(2)(b)

**Allegation C: PO Michael Perullo spoke obscenely and/or rudely to** § 87(2)(b)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: